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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,233	08/03/2001	Simon Erani	4061.007	8232

7590

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EXAMINER

KIM, JENNIFER M

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/922,233	Applicant(s) ERANI, SIMON	
	Examiner Jennifer Kim	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 17, 2006 has been entered.

Action Summary

The rejection of record 1, 3-6, 8-19, 21-24, 26-32 and 37-40 under 35 U.S.C. 103(a) as being unpatentable over "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) in view of French Patent 2746008 ('008) is hereby expressly withdrawn.

Upon further consideration, allowability of claims 2, 7, 20, 25 and 33-36 is withdrawn and following rejections have been made:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 11-17, 19-23, 29-31 and 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (US 2002/0025303A1) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) of record.

Fructus et al. teach a dermatological and/or cosmetic composition for treating symptoms of skin ageing comprising a combination of at least one methylated silanol preferably, ascorbylmethylsilanol pectinate (Ascorbosilane C®, Exsymol). (abstract, page 2, [0037], page 3 [0059], [0063]). Fructus et al. teach vitamin C derivative (tocopheryl acetate), vitamin A derivative (retinyl palmitate) and other components can be employed in the composition (page 4, [0092], [0095], Table 3, table 7, page 5).

Fructus et al. does not teach the employment of vitamins A (retinyl palmitate) and C (tocopheryl polypeptide) as protein bounded and cholecalciferol polypeptide and niacinamide polypeptide and the specific ratio amounts set forth in claim 2.

Brooks II teaches that the protein bonded vitamins of vitamin A and C (retinyl palmitate polypeptide and tocopherol polypeptide) are useful in cosmetic for the skin because they provide safe delivery system for cosmetic vitamins. (cover page under VITAZYMES Protein Bonded Vitamins, Description of products and table on second

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page). Brooks II teach that niacinamide polypeptide and cholecalciferol polypeptide are also available commercially and have advantages use in the skin care. (VITAZYME D, VITAZYME B3, second page).

It would have been obvious to one of ordinary skill in the art to modify the composition of Fructus et al. and employ the peptide bonded (retinyl palmitate polypeptide and tocopheryl polypeptide) in place of tocopheryl acetate and retinal palmitate. One would have been motivated to make such a modification in order to achieve safe delivery system of vitamin A and E of the composition taught by Fructus et al. Further it would have been obvious to combine commercially well-known niacinamide polypeptide and cholecalciferol polypeptide in Fructus et al's composition. One would have been motivated to make such a modification in order to achieve at least an additive effect in provided skin care composition taught by Fructus et al. and Brook II.

Furthermore, no unobviousness is seen in the ratio claimed because once the usefulness of a compound is known to treat a condition, it is within the skill of the artisan to determine the optimum ratio.

Claims 6-10, 18, 24-28, 32 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fructus et al. (US 2002/0025303A1) in view of "Brooks Industries, inc. Cosmetic Ingredients & Ideas Protein Bonded Vitamins" (Brooks II) of record as applied to claims 1, 3-5, 11-17, 19, 21-23, 29-31 and 37-39 and further in view of Saso et al. (1996).

The teaching of Fructus et al. and Brooks II as applied as before.

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Fructus et al. and Brooks do not teach the glycolic acid and the amounts.

Saso et al. teach that alpha-hydroxy acids (e.g. glycolic acid) are anti-ageing compounds.

It would have been obvious to one of ordinary skill in the art to combine glycolic acid into Fructus et al.'s composition as modified by Brooks II. One would have been motivated to combine glycolic acid into Fructus et al.'s composition as modified by Brooks II et al. in order to achieve at least an additive effect in treatment of anti-aging of skin. The motivation for combining the components flows from their individually known common utility (see *In re Kerkhoven*, 205 USPQ 1069(CCPA 1980)). It would be expected that the combination of components would treat anti-ageing of skin as well. The amounts of glycolic acid to be used is deemed obvious since they are all within the knowledge of the skilled pharmacologist and represent conventional formulations and modes of administration.

Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'S. Padmanabhan', is positioned above the printed name.

Sreenivasan Padmanabhan
Supervisory Examiner
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